O. Khar Lands/52

1952.

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File No. Lands/52

Legal Department

A **BRANCH**

Subject:—

Opinions Under the Bombay Khar Lands Act, 1948

O. Khar Lands/52

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Sub-section (1) of section 25 of the Bombay Khar Lands Act, 1948, provides that the cost of the scheme which has come into force under section 16 shall be met by a contribution by the State Government and the landlords and tenants in the proportion specified in sub-section (2). As pointed out by the Remembrancer of Legal Affairs in his opinions Nos.9137, dated the 3rd July 1950, and 15369, dated the 3rd November 1950, as soon as a scheme is prepared, the liabilities of all parties including Government for contribution towards the cost of the scheme will be governed by section 25. The fact that Government bore the cost of the embankment or its repairs ~~were~~ prior to the coming into operation of the scheme would be immaterial. The Remembrancer of Legal Affairs' opinion dated the 23rd June 1945 quoted by the Collector which was expressed before the coming into force of the Khar Lands Act has no application in this case. The view expressed by the Collector of Kolaba is not correct.

Sd. J.R.Dhurandhar
2/1
Remembrancer of Legal Affairs.

U.R.to R.D.,No.39, dated the 2nd January 1952.

IRP.--
30/7/56.

Legal Department.

Under section 16 of the Bombay Kazi Khar Lands Act, X 1948, when a scheme is published in the Official Gazette under sub-section (3) of section 15, it shall come into force and shall have effect as if it were enacted in the Act.[1] Section 17 provides that after the scheme has come into force under the Act, the Board shall execute the scheme in accordance with rules prescribed in that behalf. As pointed out by the H.L.A. in his opinion No.13336, dated the 20th September 1950, when a scheme is notified under section 15, it achieves statutory force; and the provisions of section 21 of the Bombay General Clauses Act, 1904, cannot be availed of to rescind the statutory scheme which has the effect as if enacted in the Act.[1]

Sub-section (1) of section 17A provides for variation of the scheme if it is found defective on account of error, irregularity or informality, while sub-section (2) provides for variation of the scheme where it is proposed to be varied in any material particulars.[1] In the present case, the object for executing the Loti Khar Lands Scheme, Khodgaon, Murud and Khatib Khar villages as stated in the scheme is to carry out repairs to the existing bund and sluice gate with a view to bringing more land under plough for food production

and increasing [illegible]

and increasing yield. The mahalkari, Umrud, reported in July 1951 that the necessary repairs have been carried out by villagers at their own cost. It is stated that the sluice gate required minor repairs costing about Rs.500/- and presumably the landlord concerned carried out such minor repairs. It is evident that the scheme sanctioned by Government under section 15(2) of the Bombay Khar Lands Act, 1948, came into force on 19-12-1950 and has already been executed by the villagers at their own cost and not at the cost as estimated in paragraphs (7A) and (7B) of the scheme. If the landlord and tenants have carried out the necessary repairs, no question of making any recovering contributions under section 25 arises. So far as the future maintenance of the scheme is concerned, it appears that the Board desires to leave it to the landlord and tenants. No question of levying annual contributions will arise so long as the repairs are carried out by the landlord. The Board may inform the landlord and tenants accordingly and warn them that, in case the repairs are not carried out to its satisfaction, the question of levying annual contribution will arise. It will be necessary to amend the Act to meet such cases in future.

Sd. J.R.Dhurandhar
23/4
Additional Secretary to Government.

U.R.to R.D., No.6262, dated the 24th April 1952.

IIRP.
-30-7/56.

Office of the R.L.A.

Transfer of schemes under Land Improvement Schemes Act - to Khar Lands Development Board

Khar Lands Act, 1948 & Bombay Land Improvement Schemes Act, 1942.

R.L.A's opinion No.12672, dated the 7th August 1951, has no application to the present case. The short question for consideration here is whether the Khar Land's Development Board can undertake to maintain works contructed under the Bombay Land Improvement Schemes Act, 1942. It is true that under section 11(2)(d) of the Khar Lands Act, 1948, the Board may pepare a scheme for the construction, maintenance, and preservation of embankments and other prescribed objects; but this scheme cannot be undertaken by the Board by more issue of executive orders. Before a scheme can be executed by the Board it will have to follow the procedure prescribed in the Act (vide sections 12 to 160, and it is only when the scheme is published in accordance with the provisions of the Act, that ti would come into force and the Board would derive power to execute it. The question that arises for consideration then is whether such a scheme can be made by the Board in respect of works constructed under the Land Improvemebt Schemes Act, 1942. There is no express provision in the Khar Lands Act, 1948, empowering the Board to take over schemes prepared and executed under the Land Improvement Schemes Act, 1942, nor is there any provision in the latter Act for transferring such a

scheme .....

scheme. Under section 10 of the Land Improvement Schemes Act, 1942, when a scheme is published under section 9(2) of the Act, it acquires statutory force and has to be acted upon as if it were enacted in the Act. A second scheme in respect of the same matter under a different enactment would not, therefore, be possible in the absence of statutory authority. Moreover, it would not also be possible to rescind that scheme as no such power has been reserved to Government and section 21 of the Bombay General Clauses Act, 1904, cannot be availed of (Cf. R.L.A's opinion No.6262, dated the 24th April 1952). In these circumstances, it would not be possible to transfer the scheme to the Khar Lands Development Board as proposed unless the Act is amended for the purpose.

Sd. P.M.Lad
15/12
Remembrancer of Legal Affairs.

U.R.to A.& F.D., No.21160/A, dated the 16th December 1952.

LRP.
30/7/56.